

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ALLEN DEAN WASHBURN,

Plaintiff,

v.

CASE NO. 17-3109-SAC-DJW

KAKE 12 NEWS TEAM,

Defendant.

MEMORANDUM AND ORDER

This matter is a civil rights action filed under 42 U.S.C. § 1983 by a prisoner in state custody. On July 21, 2017, U.S. Magistrate Judge Waxse directed plaintiff to show cause why this matter should not be dismissed, noting that the sole defendant is not a person acting under color of state law, as required by Section 1983.

Plaintiff filed a timely response (Doc. #7). The Court has considered plaintiff's argument but concludes that the complaint does not state a claim for relief under Section 1983 because plaintiff names a private actor as the sole defendant.¹ As explained in the order entered by Magistrate Judge Waxse, a plaintiff proceeding under Section 1983 must "show both the existence of a federally-protected right and the deprivation of that right by a person acting under color of state law." *Wittner v. Banner Health*, 720 F.3d 770, 773 (10th Cir. 2013) (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 924 (1982)). The party charged with the deprivation must be "a person who may fairly be said to be a state actor." *Lugar*, 457 U.S. at 937. "[M]erely private conduct, no matter how discriminatory or wrongful," does not support

¹ Plaintiff's claim appears to state, at most, a tort claim actionable in state court. The Court offers no opinion on the merits of such a claim.

a claim brought under Section 1983. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). Plaintiff's claim against a media news team alleges only private conduct and does not state a claim under Section 1983.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed for failure to state a claim for relief.

IT IS SO ORDERED.

DATED: This 26th day of July, 2017, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge